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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MANAS KUMAR BEHERA and YONG BOON HO

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Appeal 2009-010837  
Application 10/768,934  
Technology Center 2400

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Before JOSEPH L. DIXON, HOWARD B. BLANKENSHIP, and  
JAMES R. HUGHES, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

A Patent Examiner rejected claims 1-30. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

#### A. INVENTION

The invention at issue on appeal relates to a method for managing a network using a plurality of databases that includes selecting a first one of the plurality of databases that contains a topology of the network, as an active database that is accessible, selecting a second one of the plurality of databases that contains a topology of the network, as a working database for receiving topology updates, discovering a topology of the network, and updating the second database with the discovered topology, and selecting the second database as the active database. (Spec. 1).

#### B. ILLUSTRATIVE CLAIM

Claim 1, which further illustrates the invention, follows.

1. A method for managing a network using a plurality of databases, the method comprising:

selecting a first one of the plurality of databases that contains a topology of the network, as an active database that is accessible for providing information related to the topology of the network in a READ only mode;

selecting a second one of the plurality of databases that contains a topology of the network, as a working database for receiving topology updates;

discovering a topology of the network, and updating the second database with the discovered topology; and

selecting the second database as the active database.

#### C. REFERENCES

The Examiner relies on the following references as evidence:

|          |                             |               |
|----------|-----------------------------|---------------|
| Galand   | US 6,038,212                | Mar. 14, 2000 |
| Beaudoin | U.S. PG Pub 2003/0112958 A1 | Jun. 19, 2003 |
| Gupta    | US 7,330,859 B2             | Feb. 12, 2008 |

#### D. REJECTIONS

Claims 9-14, 16, 17, 22, and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Beaudoin.

Claims 1-3, 5-8, 18, 19, 21, and 24-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beaudoin and Gupta.

Claims 4 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beaudoin and Gupta, further in view of Galand.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beaudoin and Galand.

#### PRINCIPLES OF LAW

##### 35 U.S.C. § 102

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citation omitted). “Anticipation of a patent claim requires a finding that the claim at issue

‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed Cir. 1999) “In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.” *Id.* (citations omitted).

The *claims* measure the invention. *See SRI Int’l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc). “[T]he PTO gives claims their ‘broadest reasonable interpretation.’” *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). “Moreover, limitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

35 U.S.C. § 103 “What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 419 (2007). To be nonobvious, an improvement must be “more than the predictable use of prior art elements according to their established functions.” *Id.* at 417.

Invention or discovery is the requirement which constitutes the foundation of the right to obtain a patent . . . unless more ingenuity and skill were required in making or applying the said improvement than are possessed by an ordinary mechanic acquainted with the business, there is an absence of that degree of skill and ingenuity which constitute the essential elements of every invention.

*Dunbar v. Myers*, 94 U.S. 187, 197 (1876) (citing *Hotchkiss v. Greenwood*, 52 U.S. 248, 267 (1850)) (*Hotchkiss v. Greenwood* was cited with approval by the Supreme Court in *KSR*, 550 U.S. at 406, 415, 427).

ANALYSIS  
ANTICIPATION

Appellants argue independent claims 9, 13, and 22 together as a group. (App. Br. 6). Therefore, we select independent method claim 9 as the representative claim and will address Appellants' arguments with respect thereto. Appellants argue that Beaudoin does not anticipate independent claim 9 related to exchanging connections of the working and active databases. (App. Br. 6). Appellants contend that the local database 6 of Beaudoin is a snapshot of the global database 5 and that the connections of the global database 5 and the local database 6 are static so that there is no teaching of exchanging connections of the global database and the local database. (App. Br. 6-7).

Appellants contend that the "connection" in Beaudoin is the clients' connection and that in contrast to Appellants' exemplary embodiments are directed to exchanging the connections of plural databases (i.e., working and active databases) to a network. (App. Br. 7). Yet, Appellants do not identify any express definition for "exchanging the connections [to a network]" nor do Appellants expressly recite any details of the exchange of network connections.

The Examiner maintains that the claim language requires only that a "connection" is "exchanged" between a working and an active database. The

Examiner maintains that paragraphs [0028], [0030], [0032], and [0033] teach connectivity switching, moving a connection between a first and 2nd database source. (Ans. 17-18). We agree with the Examiner and find that the network management tool 10 describes presentation of altered versions of the base model representation or topology of the network. Beaudoin teaches that the information set 16 may be entered into the global database 5 by having the communication devices 14 and links 13 contained in the telecommunications networks layout 3 directly communicate with the global database which is essentially a real-time update along with historical status. [0030]. Beaudoin further describes that the local database 6 receives and stores portions of the information set 16 which are of interest or selected by a user. [0033].

Appellants disagree that Beaudoin anticipates claim 9 and further contend that the changing of a client computer connection and the Beaudoin patent does not constitute "exchanging connections of the working and active databases" where the connections of the working database and the active database are exchanged so that the former working database becomes the active database, and the former active database becomes the working database. (App. Br. 7-8). We disagree with Appellants' claim interpretation and find no express limitations in the language of independent claim 9 to support Appellants' contention. Nor have Appellants identified any express definition to support Appellants' contention.

Furthermore, we note that the language of independent claim 9 merely requires a single occurrence of an exchange of connections between the databases rather than a repeated exchange of connections. Therefore, we

agree with the Examiner that the client will connect to the first database in order to select new and more recent topology data to work with the second database thereby exchanging connections. (Ans. 19).

Appellants argue that the

local database 6 cannot directly receive the updates from the data collector 4 because of the static connection of the global database 5 and the local database 6. Therefore, Beaudoin fails to teach or suggest any ability for exchanging connections of the working and active database as recited in Appellants claim 9.

(App. Br. 8). Again, Appellants' argument is not commensurate in scope with the language of independent claim 9 since independent claim 9 does not identify the connections, does not detail the exchange, and does not expressly recite any data collectors or outputs. Therefore, Appellants' argument is not persuasive of error in the Examiner's showing of anticipation of independent claim 9. Since Appellants have not set forth separate arguments for patentability of claims 10-12, 22, and 23, we will group those claims as falling with independent claim 9.

With respect to dependent claim 12, Appellants contend that "Beaudoin does not teach or suggest that the local database 6 and the global database 5 are partitioned from the same database." (App. Br. 8). The Examiner maintains that the Beaudoin reference teaches that these databases are created using "subsets" which are equivalent to the creation of "partitions" where a "subsets/snapshot" of the information contained in the global database is used for partitioning the database. (Answer 18). We

agree with the Examiner's interpretation and find that claim 12 does not recite when this step is performed and is broad enough to read upon the initial formation of both the global and local databases of Beaudoin.

Therefore, we sustain the rejection of dependent claim 12.

With respect to independent claim 13, Appellants merely repeat the language of claim 13 and set forth similar arguments advanced with respect to independent claim 9. Thus, it is our view that Appellants have made a general allegation in the Appeal Brief that the above-mentioned claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes over the cited references. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. *See* 37 CFR § 41.37(c)(1)(vii). We find Appellants' appeal is based on a series of conclusory arguments presented in the Brief. This form of argument is ineffective in establishing the patentability of the claims on appeal. *See Ex parte Belinne*, No. 2009-004693, slip op. at 7-8 (BPAI Aug. 10, 2009) (informative). Since we found Appellants' arguments unpersuasive with respect to independent claim 9, we similarly find them unpersuasive with respect to independent claim 13 and dependent claims 14, 16, and 17.

## OBVIOUSNESS

With respect to independent claims 1, 18, and 24 rejection under obviousness, Appellants repeat the language of independent claim 1 and provide similar arguments as advanced with respect to independent claim 9 and provide arguments that neither prior art patent discloses the use of a "working database" and an "active database" wherein either database can be

selected as the "active database" and wherein the active database provides information in a "READ only mode." (App. Br. 11). The Examiner maintains that the Gupta reference is merely relied upon for the READ only mode and the Examiner finds the teachings of Beaudoin to be suggestive of limited functionality of the local active database which is not modified while the needed information is retrieved from the database and manipulated by the graphical user interface. (Ans. 19). We agree with the Examiner's findings and conclusions and find that Appellants' labels for the databases does not limit the functionality in the claimed method where the preamble of independent claim 1 recites "managing a network," but the remainder of the claim does not manage a network. As disclosed by Beaudoin, data and databases may be updated, copied/read, and written to. The local and global database of Beaudoin may be called/labeled "active" or "working" and the labels switched with no loss of functionality since nothing in the recited method changes or manages the network. Therefore, Appellants' argument is not persuasive of error in the Examiner's showing of obviousness of independent claim 1.

Additionally, Appellants argue that

[b]ecause the Beaudoin and Gupta patents are not directed to the problem Appellant has addressed, these patents (considered individually or in combination) do not teach or suggest the presently claimed feature of changing a selection among two databases, with an "active" database being a READ only database and the other database receiving updates.

(App. Br. 11). But, Appellants' argument is not commensurate in scope with the language of independent claim 1 since the claim does not recite that "with an 'active' database being a READ only database

and the other database receiving update" since the claim ends with BOTH databases being "active" and the original active database was not made as the "working" database. Therefore, Appellants' argument is not persuasive of error in the Examiner's showing of obviousness of independent claim 1.

Appellants argue that Beaudoin and Gupta patents are not directed to the problem Appellants have addressed, and these patents (considered individually or in combination) do not teach or suggest the presently claimed feature of changing selection among two databases, with an "active" database being a READ only database and the other database "receiving updates." (App. Br. 11). We disagree with Appellants' contention and find no support for the asserted "problem." Therefore, Appellants' argument is not persuasive of error in the Examiner's showing of obviousness of independent claim 1.

Since Appellants have not set forth separate arguments for patentability of independent claims 18, 24, or dependent claims 2, 3, 5-7, 19, 21, and 25-30, we will group those claims as falling with independent claim 1.

With respect to dependent claim 8, Appellants merely repeat the claim language and asserts that the relied upon portions of Beaudoin does not anticipate the subject matter of claim 8. (App. Br. 12). We note that the rejection is based upon obviousness and not anticipation. Appellants' conclusory statement does not identify how the relied upon portions of Beaudoin do not render the claimed invention obvious. We further note that

dependent claim 8 does not identify how the comparing step is implemented. The Examiner has identified the teachings of Beaudoin found in figures 5 through 7. These figures describe the comparing of data from two databases where this comparison may be performed visually by a user.

Appellants have not set forth separate arguments for patentability of dependent claims 4, 15, and 20. Therefore, we grouped these claims as falling with their respective parent claims.

## CONCLUSION

For the aforementioned reasons, the Appellants have not shown that the Examiner erred in the anticipation rejection of independent claim 9 or the obviousness rejection of independent claim 1.

## VII. ORDER

We affirm the anticipation rejection of claims 9-14, 16, 17, 22, and 23; and the obviousness rejections of claims 1-8, 15, 18-21, and 24-30.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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